EXHIBIT B

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF MISSISSIPPI

DELTA DIVISION

SHIRLEY WHITE, As Wrongful Death Beneficiary or KEITH PERKINS, DECEASED, Plaintiff, vs. WEXFORD HEALTH SOURCES, INC., Defendants.	Cause No. 2:09CV161-D-V Consolidated
CONSOLIDATED WITH	
SHIRLEY WHITE, As Wrongful Death Beneficiary or KEITH PERKINS, DECEASED, Plaintiff, vs. CHRISTOPHER EPPS, Individually and in his Official Capacity, et al., Defendants.	Cause No. 2:09CV161-D-V

VIDEOTAPED VIDEO CONFERENCE DEPOSITION OF
BERNARD MICHLIN, M.D.

Taken at San Diego, California
March 7, 2013

T. A. Martin, CSR
Certificate No. 3613

I-N-D-E-X

EXHIBITS: PAGE

DEPOSITION OF BERNARD MICHLIN, M.D.

Pursuant to Notice to Take Deposition, and on the 7th day of March, 2013, commencing at the hour of 9:15 o'clock p.m., at 401 West A Street, Suite 135, in the City and County of San Diego, State of California, before me, T. A. Martin, Certified Shorthand Reporter in and for the State of California, personally appeared:

BERNARD MICHLIN, M.D.,

who, called as a witness, and being by me first duly sworn, was thereupon examined as a witness in said cause.

APPEARANCES

For the Plaintiff:

WAIDE & ASSOCIATES, PA
By: JIM WAIDE, ESQ.
Post Office Box 1357
Tupelo, Mississippi 38802
662-842-7324

For Defendant Wexford Health Sources, Inc.:

JOSEPH A. O'CONNELL, ESQ.
Post Office Box 18109
Hattiesburg, Mississippi 39404

For Defendants MDOC, Christopher Epps and Gloria Perry:

SPECIAL ASSISTANT ATTORNEY GENERAL
TOMMY GOODWIN, ESQ.
Post Office Box 220
Jackson, Mississippi 39205

VIDEOGRAPHER: Shayne Davidson, VideoTrack

EXAMINATION

BY MR. O'CONNELL:

Q. At this time, Dr. Michlin -- I'm Joe O'Connell, and I'd like to ask a few questions.

First, what have you read and reviewed in connection with evaluating this case and preparing for your testimony today?

MR. WAIDE: Excuse me for interrupting, Joe. That is not an appropriate question. The question is his qualifications. You can cross-examine --

MR. O'CONNELL: Well, the extent to which he's familiar with this stuff goes to what he knows and that goes to his qualifications.

MR. WAIDE: Doctor, I can't -- I mean I meant to just -- the objection should be as to whether he's not qualified to be an expert in internal medicine. The rest of this you can do on cross-examination and ask him all day.

BY MR. O'CONNELL:

Q. Well, you know, let me ask you, if you would, Dr. Michlin, to answer that question.

MR. WAIDE: You'll have to answer, Doctor. I'm sorry to interrupt your deposition, but we have to tender you as an expert and I can't control what he asks, so you're going to have to tell him what you reviewed.

THE WITNESS: That's all right.

Joe, can you move over a little bit closer -- there we go. Thank you.

MR. O'CONNELL: Can you see me now?

THE WITNESS: Yes, thank you. Could you please repeat the question. I forget what it was.

BY MR. O'CONNELL:

Q. Okay. What have you read and reviewed in connection with evaluating this case and preparing for your testimony today?

A. I have read all of the documents that have been forwarded to me from Mr. Waide's law firm, including --

Q. What does that include?

A. Including the -- Mr. Perkins' previous medical history and records, some of the records from the jail, the records from the prison system, the records from the acute hospitalization in Mississippi, the coroner's report and death certificate, and then a number of depositions, as well as a summary of depositions and the -- the report from Dr. Lundquist and Dr. Hartwig, I think his name is.

Q. Okay. And when did you -- go ahead.

A. And I always -- in order to back up my opinions, I always refer to the two Bibles of medicine that I consider, which is Harrison's textbook of internal

medicine and Cecil's textbook of medicine. I referred to the seizure section in both textbooks. I will stand by or agree with everything said in those two textbooks. I consider them to be the Bible of medicine.

Q. Okay. Let me ask you this: At the time you prepared your expert report in this case, Dr. Michlin, had you read any of the depositions or either Dr. Lundquist's report or Dr. Hartwig's report?

MR. WAIDE: Excuse me, Doctor. Let me stop and interrupt. Object to the form of the question.

Doctor, there are two expert reports. He did a preliminary report early on and then he did a later report. I assume you mean the final --

MR. O'CONNELL: Yes, the final expert report.

Q. At the time you prepared your final expert report which was submitted to us I believe on January 15, 2013, had you, you know, read any depositions or either Dr. Lundquist's report or Dr. Harwig's report?

A. I usually read all of the information within two or three days of receiving it. I can tell you that the deposition summaries I received after writing my report. I have two depositions, one from Dr. Walker, and one from Dr. Brooks which I had read I believe prior to reading this. I don't remember when I received Dr. Lundquist's and Dr. Hartwig's reports. So I truly -- I'm sorry. I

don't remember what I knew when I wrote the report and what I didn't. I don't believe -- I can't swear by it, but I don't believe I had read their expert reports prior to writing my report.

Q. And you are not sure, as I understand your testimony, whether you had read the depositions of Dr. Thornton-Walker and Dr. Brooks prior to submitting your report?

A. I believe I have, but I can't be 100 period of time certain. I believe I received those -- give me a moment, Counselor. I believe I read those two depositions, yes. I can't be absolutely certain, but I believe I did.

Q. Let me ask you this, Dr. Michlin. Since preparing your final expert report, have you ever amended it or made any additions to it to further clarify or elaborate on your testimony?

MR. WAIDE: Excuse me. Just for the record, we are talking about two different reports. There was an early on -- and I don't have the date, Doctor, and I --

MR. O'CONNELL: I did say final report.

MR. WAIDE: He's referring to your final report, Doctor.

THE WITNESS: Yes. I'm sorry. Counselor, ask me question again, please.

BY MR. O'CONNELL:

Q. Sure. Since you prepared your final report which was submitted to us with the designation of experts, dated December 31, 2012, have you ever made any additions or amendments to that report to further clarify or elaborate on your opinions or the bases for your opinions?

A. Not in writing. I was under the impression that this deposition today would give me an opportunity to do that, Counselor.

Q. Okay. But you have not done so in writing; is that correct?

A. No. I hadn't been requested, so I don't think do anything unless I'm requested to.

Q. Okay. Now, you also acknowledge, as you did a moment ago, that you have not -- you had not read either Dr. Lundquist's report or Dr. Hartwig's reports prior to the preparation of your final report; that's correct, is it not?

A. That is correct. I believe mine preceded theirs.

Q. Okay. And your final report, which has never been amended, does not include any reference to opinions relating to what either Dr. Lundquist or Dr. Hartwig had expressed in their reports, does it?

A. Correct, because it wasn't available to me to refer to.

Q. Okay.

A. Somebody has to go first, Counselor.

Q. I understand.

And you also, in your final report, do not make any reference to either the deposition of Dr. Thornton-Walker or the deposition of Dr. Brooks, do you?

A. I believe that is correct.

MR. O'CONNELL: Okay. You know, at this point, you know, again we would renew our objection to the Court -- and this is for the Court, Doctor -- to exclude and disallow any testimony by Dr. Michlin, you know, relating to subjects not included in his final expert report, because, you know, there has been no provision of any related information to me about that which would permit us to prepare to cross-examine him on those subjects.

So with that, renewing that motion, let me continue.

Q. You know, when you were questioned by Mr. Waide, you know, about your practice as an internal medicine specialist, you reviewed, you know, the different types of patients and medical issues and problems that you address in internal medicine, and you said them so

quickly that I didn't get them all.

Would you mind repeating those slowly?

A. Yes. The practice of internal medicine includes 13 subchapters. Those subchapters, not totally inclusive, are heart, cardiology, lungs, pulmonology, glandular, endocrinology, stomach and guts, gastroenterology, urinary, which would be urology which is really a surgical subspecialty, nervous system, which would be neurology. I'm not keeping count, so I don't know if I'm going to hit them all.

Those are the big -- kidneys, which would be nephrology.

Q. And liver?

A. Well, liver is actually hepatology, but that is a sub-subspecialty of gastroenterology, so that would still be part of the GI system. I guess those are the biggies, Counselor so.

Q. Okay. Thank you.

If you will, you know, what percentage of your time do you spend in a typical six-month period as an investigator and supervisor in, you know, medical clinical trials for various medications?

A. What percentage of my time?

Q. Yes.

A. I spend about 15 minutes -- about 15 minutes a

day on the average.

Q. Okay. And your C.V. lists, does it not, the various clinical trials that you have supervised or participated in as an investigator, correct?

A. Yes.

Q. And, you know, as the C.V. shows, you have participated in clinical trials that relate to drugs that treat anemia, diabetes --

A. I'm sorry. One of the subspecialties I left out would be oncology cancer and leukemias as well as arthritis, rheumatoid arthritis and other arthritis, rheumatology and -- I didn't mean to interrupt. I'm sorry, Counselor. You just reminded me.

Q. Okay. Well, I don't want to interrupt you. You think you have competed the additions you wanted to make?

A. Yeah. There is a couple more, but they are not germane at this second.

Q. All right. Going back to the list of the types of drugs in which you have participated as a supervisor and investigator in clinical trials, we have got drugs for anemia, correct?

A. Correct.

Q. Diabetes, correct?

A. Correct.

Q. COPD which is what?

A. Pulmonary emphysema, so that is under the lungs or pulmonary that we talked about. Pulmonology.

Q. Okay. Atrial fibrillation, which is what?

A. Cardiology or the heart.

Q. Okay. Chronic renal failure?

A. That would be the kidneys or nephrology.

Q. Okay. Acute sinusitis?

A. Yes. That would be infections, so I didn't mention infectious diseases as another subspecialty.

Q. Okay. Blood pressure?

A. That would be hypertension.

Q. And part of the cardiology subspecialty of internal medicine?

A. I guess, yes.

Q. Okay. Rheumatoid arthritis?

A. Rheumatology or arthritis, yes.

Q. Okay. Osteoarthritis?

A. Again, rheumatology or arthritis.

Q. Okay. Now, you know, as I review, you know, the list of medications and clinical trials that you have participated in, I did not see any medications that related to the treatment of seizure disorders. Is that accurate and correct?

A. That is correct, Counselor.

Q. Okay. Now --

A. Would you like to know why or -- there is no question pending.

MR. WAIDE: You can explain your answer, Doctor. If you can explain it, explain your answer. Go ahead, Doctor.

BY MR. O'CONNELL:

Q. Well, if you want to explain it, you can?

A. Well, I just don't want to give the jury or you the wrong impression.

In order to do an investigative -- investigation of any kind, you have to either have patients that are uncontrolled or willing to become uncontrolled. So if you have people -- so you're always tampering with their treatment protocol. So in the case of arthritis, patients always want to be better, so they don't mind your tampering. In the case of COPD, they don't mind you tampering. But in the case of seizures, when I'm offered to do a seizure medication, that means taking my patients which are controlled, taking them off their medications, giving them a drug holiday, starting them on medications that may or not be placebos. So I don't feel comfortable with that. So the only drugs that I feel comfortable testing are those in which I am comfortable that my patients will not have any additional medical issues. I'm not saying that seizure studies cause additional

medical issues, but in order for me to sign off on a study I have to be personally -- as the primary investigator, I have to be comfortable with the study. So I pick and choose those studies which I want. And of the 20 or 30 studies you see listed, I have turned down hundreds of studies.

Q. Let me ask you this: In your practice as an internal medicine specialist, do you treat patients who have pulmonary problems?

A. Yes.

Q. But no seizures?

A. Pardon?

Q. No seizures -- do you treat patients who have pulmonary but no seizure disorders?

A. Yes. You are talking about the same patient, correct?

Q. Yes.

A. Yes. Whether or not they have a seizure disorder has nothing to do with any of their other disorders. So any of my patients with seizures could have any other medical issue. In other words, having a seizure doesn't preclude them from having hypertension, diabetes, thyroid disease, lung disease. The two are mutually exclusive.

Q. I understand that, and thank you for the

explanation. But, you know, you also in the course of your practice treat patients who simply have a lung disorder perhaps and no other medical issues?

A. Yes. Usually most of my patients are fairly complex. So my -- most of my patients have at least two or three different system problems. So it could be pulmonary and cardiac, or cardiac and endocrine with diabetes. I tend to have a more complicated practice than other physicians.

Q. Okay. And do you also treat patients who have kidney disorders?

A. Yes.

Q. Do you treat patients who have liver disorders?

A. Yes. That falls understand the gastroenterology.

Q. Okay. At this time about how many active patients do you have with heart disorders, cardiology problems or hypertension?

A. 1000, 1500.

Q. Okay. How many patients do you see actively at this time who have pulmonary problems of one type or another, whether COPD or something else?

A. It's interesting you should ask that question, because that number is dropping since in California people have stopped smoking over the last 20 years. So

it has gone from probably 30 or 40 percent of my practice in the eighties down to maybe 10 or 15 percent of my practice now. So let's say a few hundred.

Q. Okay. And how many active patients do you have with diabetes or other endocrine disorders.

A. That is quite high again because, as you know, over the last 30 years the instances of diabetes has been escalating throughout the world. So I would say five or 600, keeping in mind that these can be the same patients that also have heart disease or cardiovascular problems.

You're not asking for -- so when you add this up it's going to come to more than 100 percent.

Q. I understand.

A. Okay.

Q. How many active patients do you see at this time who have, you know, kidney disorders of one type or another?

A. A couple hundred.

Q. All right. And how many active patients do you see at this time who have liver disorders?

A. Liver disorders?

Q. Liver disorders or --

A. Maybe 100. I'm thinking of the hepatitis B and C or the fatty livers with steatorrhea. So a couple hundred.

Q. Okay. How many patients do you see who have other GI problems besides liver disorders?

A. Oh, with your inflammatory bowel disease, reflux or GERD or heartburn, as you might call it, it could be three or 400.

Q. How many active patients at this time do you have that have rheumatology disorders?

A. If you count osteoarthritis, a few hundred. If you count the more complicated ones, maybe -- maybe 20 or 30.

Q. Now, if we could, Dr. Michlin, let's return to Exhibit 6, which is your expert list of cases, is it not?

A. Yes. I -- it's not all inclusive; it's not complete. I keep it as complete as possible, but sometimes things slip through the cracks, so I apologize for that.

Q. Okay. Let me ask this, Dr. Michlin. To the extent it's incomplete, does it relate to cases in 2012 and 2013?

A. Yes, because I did testify in 2012 I think twice. I don't remember the names of the cases. One took place in Riverside, California, and one was in Orange County, California, I believe. And I do apologize. I do know I testified I believe twice in 2012. I'm sorry that's here.

Counselor, I think that's because I sent you the C.V. when we first had initial contact. I can try when we have a break or if we have a break to give you an updated list. I believe this list -- it says updated November 2011. I do have one that's been updated since the end of 2012, so it will include the 2012.

Q. Okay. Let's go back to 2006, if we may. There is one case listed there, is there not?

A. Yes.

Q. Okay. That is McEuen v. W. Anaheim. And which party did you represent in that case?

A. Cornelius Bahan is a plaintiff attorney, so I must have been on the plaintiff's side.

Q. Okay. Do you remember what the issues were in that case Dr. Michlin?

A. No, I don't.

Q. Okay. If we go next to 2007, there is one case listed, and it is Aurora and Melvin Lamb vs. Pacific Monarch Resorts, Inc. Which party did you represent in that case?

A. The defense.

Q. Okay. And what was -- was Pacific Monarch Resorts your client?

A. No. I don't know who my client was. I represented Walsh & Furcolo which is a defense firm. It

had to do -- yes, I guess they were. It had to do with burns that were sustained in a fire. I don't remember the circumstances of the fire which is why I don't know who I represented. It had to do with the -- it had to do with the injuries that the -- that the individual sustained in the fire and how that pertained to medical issues.

Q. Okay. So basically your testimony in that case related to the nature and extent of the medical injuries and the prognosis for this person in the future?

A. I don't remember exactly. I remember it was a burn case, because I remember Pacific Monarch Resorts had a fire and I don't remember the circumstances.

I -- Counselor, when I do something, a year later I move on to something else.

Q. Okay. Let's move to 2009. And the first case listed there is William Chesser V. Alea North America Insurance Company.

A. Yes.

Q. Which party did you testify for in that case?

A. I have no specific recollection of that case or any of its details.

Q. Okay. Let's go next if we can to the next case listed for 2009, which is Gregory Slingluff V. State of Hawaii. Which party did you testify for in that case?

A. The plaintiff.

Q. Okay. And what were the issues in that case?

A. Actually that is interesting. Mr. Slingluff was incarcerated through the system of the State of Hawaii, and he suffered -- he suffered an injury while incarcerated. And it was a failure to diagnose and treat and the injuries sustained from that failure. And so in a way it's similar to this case.

Q. Okay. What was the medical condition that was not diagnosed?

A. He had a scrotal abscess.

Q. Now, just for clarification, Dr. Michlin, what is the scrotum?

A. The scrotum is the -- in a male, males have scrotums. It's the bag that holds the testicles in a male. So when they refer to having balls, it's -- the scrotum is the bag that hold the testicles of the male or the balls in the term that -- the normal term that people use.

Q. Okay. All right. Let's go if we can to the next case which is Mowrey V. Harriman Jones. Which party did you testify for in that case?

A. That was plaintiff as well, Counselor.

Q. Okay. And what were the issues in that case?

A. That was a death related to untreated pneumonia.

Q. And was -- all right. Let's go to 2010. And the first case listed there we only have one name, O'Dean. Which party did you represent in the O'Dean case?

A. I don't think O'Dean was a medical malpractice case. I think it was a personal injury case. Again, I don't have a specific recollection, but I remember testifying in a personal injury case with Mr. Maiorano and he's a plaintiff's attorney, but I don't remember the details.

Q. Okay.

A. And I can't be absolutely sure that that is true.

Q. Was Mr. O'Dean your patient?

A. No.

Q. Okay. Was the plaintiff in Aurora and Melvin Lamb V. Pacific Monarch Resorts your patient?

A. No.

Q. All right. The next case listed for 2010 is Lefforge V. Wesley Kobayashi, DPM, et al. For whom did you testify in that case, Dr. Michlin?

A. The plaintiff.

Q. Okay. And what were the issues in that case?

A. That was a failure to diagnose and treat a sarcoma.

Q. Okay. And a sarcoma is what?

A. It's a very aggressive deadly tumor that -- I believe one of John F. Kennedy's children had one, the one who lost his leg in the sixties. It tends to attack the bone, an osteosarcoma. It attacks the bone. And the only treatment is basically very aggressive, cutting off the leg. And this was an individual who died because of failure to diagnose the osteosarcoma coma of the leg.

Q. I believe that was Ted Kennedy's child.

A. Thank you. Thank you.

Q. Okay. Now, let's go if we can to 2011, and the case listed there is Paul Fergen. Okay. And did you testify for Mr. Fergen in that case?

A. Excuse me. I misquote -- I misstated. The case you and I just talked about, about the osteosarcoma?

Q. Yes.

A. That was the case in 2011 with the Markham Group. I misstated on the Kobayashi, so we need to go back to that one.

Q. Okay. So what is the Kobayashi?

A. That was -- Greer & Associates was for the defense, and that was for an allegation of inappropriate use and dosages of opiate tell narcotics resulting in a respiratory arrest and death. I don't know that -- I don't remember -- no, respiratory arrest and then

significant post-arrest neurological injury.

Q. Okay. Now, you told us a moment ago about the cases from 2012. You explained that you could not remember the names, but that one was from the Riverside, California area?

A. Correct.

Q. Do you remember now, having had a moment to think, what the style or name of that case was?

A. No, I don't know the name. I don't remember the name; I don't remember the attorney. But that was another urological case. That was a gentleman who had significant urological issues due to urethral strictures and damage.

Q. Okay. And who was the party that you testified for in that case?

A. The plaintiff.

Q. Okay. Now, the other 2012 case was in Orange County which is near where you live?

A. Yes.

Q. What -- do you recall the name of that case at this time?

A. The only thing I remember is being in court. I don't remember -- I'm sorry. I don't -- I don't remember anything about it. Again, if we have a break or an opportunity, I will get you an updated C.V. -- an updated

list, including 2012.

Q. Can you remember the name of the party or -- whether the party whom you represented in the Orange County case was a plaintiff or defendant?

A. No, I don't. I really just remember going to court. I don't have any specific recollection of the case. Doesn't tell you much about the case, does it? Or it tells you a lot about the case. It was uninteresting.

Q. Okay. At this time let me ask you whether as a physician you have ever worked, you know, day to day in a correctional setting?

A. No.

Q. Have you ever worked in a correctional setting on a temporary basis?

A. No.

MR. O'CONNELL: At this time, you know, we would conclude our voir dire of Dr. Michlin and reserve for the Court, you know, any additional motions that we have regarding his qualifications and thus tender the witness back to Mr. Waide.

MR. WAIDE: You object -- you maintain he's not a qualified expert?

MR. O'CONNELL: We are going to think about that in light of the information that we have received.

MR. WAIDE: Counsel, do you have any questions?

Q. According to your state of the medical history of Mr. Perkins after he entered the Wexford facility, can you tell the jury and tell us counsel -- tell us whether or not in fact in Mr. Perkins' case his medications were discontinued?

A. Yes, his medications were discontinued when he left from the jail and went to the prison system.

Q. Could you tell under the -- could you tell from your review of the medical records that you saw in the medical records whether there was any procedure at Wexford to continue a patient on his medication once he was transferred from some other facility into the Wexford facility.

MR. O'CONNELL: Objection. Leading?

BY MR. WAIDE:

Q. Do you understand the question?

A. Yes, I believe so, Counselor.

So when he entered the prison system --

Q. Tell you what. Let me ask it in a different way. I want to make sure it's not leading.

Can you tell us whether there was any procedure -- whether or not there was any procedure that Wexford had in place to keep a person who was on seizure medication continuing on that medication when he got transferred into Wexford?

A. When he was transferred --

MR. O'CONNELL: Same objection.

THE WITNESS: Excuse me. When he was transferred into Wexford there was a notation on the intake forms that he had been on these medications; that he had a seizure disorder and that he was allergic to dilantin. Once that -- once that information was on the intake form, that information was never continued into the medical aspect of his care. So that no one in the medical areas was aware that he was on those medications. It was only when he stated "I haven't gotten my medications in four days; I need my medications" did the issue medically ever come up that he had seizure disorder.

BY MR. WAIDE:

Q. How would you characterize -- how would you characterize in this case the act of taking a patient with a known history of seizures into custody by a correctional facility and not taking any steps to continue his medication? How would you characterize that type of --

A. I would say that that would --

MR. O'CONNELL: Objection. Calls for speculation, you know, not based on predicates in evidence.

BY MR. WAIDE:

Q. Go ahead, Doctor. How would you describe that? How would you characterize a system whereby a prisoner is taken into custody by a correctional facility and his antiseizure medication is arbitrarily discontinued.

MR. GOODWIN: Objection for the record to the record to the extent that counsel is asking for an opinion with regards to the MDOC defendants or MDOC that is outside the four corners of this expert witness's expert report.

MR. O'CONNELL: And, you know, I would just renew the same objections on behalf of Wexford. You know, this is an attempt to get him to sort of address and characterize matters that are likewise plainly -- in additions to the reasons I stated earlier -- you know, beyond the scope of his expertise. You know, he's not here as an expert on how things are done at correctional institutions.

BY MR. WAIDE:

Q. Go ahead, Doctor. I may ask you additional questions. Go ahead and give an answer to that question.

A. When somebody requires medical care and is moved from one facility or one location to another, it's imperative that the medical information be transferred with that patient so that their medical care can be

continued. In this case we're talking about a seizure -- seizure medications and seizure disorder, but what if we were talking about an insulin-dependent diabetic who is requiring insulin and he didn't get his insulin? That could be a life-threatening, life-endangering situation as well. So we are not just talking one specific individual, one specific disease. In general, it's imperative and it's necessary and essential that someone's -- important medical information be transferred along with the patient so they can continue to get their care. And depending on the disease in which we are talking about, if that doesn't continue, then their life can be in danger. HIV, for example. You have patients that have HIV that must get their antiviral medications. If they don't get their antiviral medications on a timely and regular basis, then you're risking that disease becoming uncontrolled and their death again.

So it's easy to just say we are talking about seizures. Heart disease would be the same thing. If they have congestive heart failure and they weren't getting their cardiac medication, it could lead to great harm or death. Diabetics not getting their diabetic medication or their insulin could lead to great harm or death. People with infectious diseases not getting their medications could lead to great harm or death. So just

with those three examples -- and there is many more -- it's imperative that a medical history of a patient follow the patient. I mean if we are talking about a little gout and they are going to get a gout attack, that may lead to a gout attack, but not death. But when you are talking about serious medical issues, there has to be a system in place in which to continue their medical care without undo interruption.

Q. In your opinion, Doctor, would you tell us whether or not failing to have a system in place to keep a person with a history of seizures on his medication -- that is, to continue his medication -- would you tell us whether or not in your opinion that would represent a willful indifference to human life?

MR. O'CONNELL: Object to this question. A you know, this calls for a legal conclusion. You know, it is completely outside the scope of his expertise. It invades the province of the injury.

Also, I'd like to, you know, for the sake of brevity, adopt the objections, you know, previously made as to, you know, the scope of his qualifications to address this. And, you know, there is nothing in his expert report or in an interrogatory answer that in any way, shape, form or fashion addresses any of these issues with regard to deliberate indifference. That term never

appears anywhere the report. And, you know, for -- all the reasons I just enumerated, in addition to objecting to these questions, I'd like to move to strike as unresponsive and inappropriate the testimony that Dr. Michlin has given to, you know, the preceding two questions?

MR. GOODWIN: And the MDOC defendants simply renew the objection -- our last objection.

BY MR. WAIDE:

Q. Doctor, in response to their objection that they just made, would you look over to your report on Page 10, the last sentence of your report.

A. Yes.

Q. Do you recall their objection just saying it's not in your report. Would you look on Page 10, and would you read into the record the last sentence of your report right above your 20 December, 2012. Read that sentence into the record.

A. "It is my further opinion that the negligence in this case was gross and extreme and may properly be characterized as representing a deliberate indifference to human life."

MR. O'CONNELL: Again, I acknowledge it is in his report, but this is not a proper subject for his testimony.

BY MR. WAIDE:

Q. If you would also in response to his questions that your report is inadequate or incomplete or whatever objection he's making, would you look over to Page 8 of your report, Paragraph 7. And would you read into the record Paragraph 7 of your report.

A. "Wexford failed to implement any procedures to cause the prisoner who had been prescribed antiseizure medication to be continued on that medication. Failing to continue prescribed antiseizure medications without a medical reason for stopping this medication is a potentially life-endangering event.

Q. All right. That is what you put in your report at the time when you signed it on December the 20, 2012; is that correct?

A. Correct.

Q. Doctor, if you would, you earlier testified that both you and the defendant's expert have given a history -- and it's in your report and his expert has also given a history, but if you would just go through and tell us in as succinct summary as you can, according to the medical records, what happened to Keith Perkins once he came in to the Wexford facility. Just go through the history of what happened at him at that point?

A. He -- when was he transferred he was admitted I

Remember, these aren't tablets; these are capsules.

MR. WAIDE: All right. Doctor, I believe that is all that I have. Counsel will ask some questions for you. I don't know whether they want to take a break.

MR. O'CONNELL: Not right now. Not right now.

MR. WAIDE: Is it okay with you? You all need a break out there?

THE WITNESS: No. I'm fine, Counselor. Okay.

EXAMINATION

BY MR. O'CONNELL:

Q. Dr. Michlin, you are not a lawyer; is that correct?

A. That is correct.

Q. Okay. And except for your experience testifying in various cases as an expert witness, you have not received, you know, any formal legal training; is that also correct?

A. I am not a lawyer; that is correct.

Q. Okay. And is it also direct that you have never received any formal legal training in, you know, areas of the law?

A. I have taken medical/legal courses as they pertain to medicine for CME at appropriate conferences,

but not as a lawyer, but as a doctor.

Q. Okay. And so to the extent that would be considered, you know, formal medical/legal training, that is the extent of the formal legal training that you have received?

A. Correct.

Q. So you have never studied or learned how to evaluate how terms are defined and applied under 42 USC Section 1983, have you?

A. Are we referring to a reasonable degree of medical probability versus a reasonable --

Q. If you'd like me to, let me rephrase the question and go at it again.

Are you familiar, as you sit here today, can you tell me what the statute in the US Code -- 42 USC Section 1983 is or what it covers?

A. No.

MR. WAIDE: Object that that is a legal question. That's not a question of a doctor.

MR. O'CONNELL: Well, okay.

Q. Have you ever undergone, you know, any training or instruction as to, you know, how to evaluate and apply the meaning of key legal terms and phrases that come up in Section 1983 cases?

A. Are we referring to the terms possibility,

probability?

Q. No, sir.

A. Okay. I can only speak to -- I understand when I say to a reasonable degree of medical probability, certainty or possibility. Those are the terms that I can relate to.

Q. Okay. So you have not undergone any formal legal training that applies to how to interpret and utilize various phrases that exist in legal cases under Section 1983?

MR. WAIDE: Excuse me. Object as to the form of the question. He's not a lawyer. That's not an appropriate question.

THE WITNESS: Again, I can only tell you that I practice medicine and I give my opinions as a physician. I'm not a lawyer, and I don't give any legal -- legal opinions.

BY MR. O'CONNELL:

Q. Okay. And, you know, have you ever read or studied what the phrase "deliberate indifference" means as interpreted and applied by federal courts in the United States?

A. I have used those terms in the past. I have been -- in different cases those terms have been discussed. And I find to come to that level and to say

to deliberate is -- has a very high bar to pass.

Q. Okay. But -- you know, but have you ever studied the case law yourself that defines what that term means and how it is to be applied?

A. No. How I apply it is from a point of view of a physician.

Q. So insofar as lawyers and judges are concerned, you do not know how they interpret and apply the phrase "deliberate indifference"; you only know how to interpret -- or what that phrase means to you as a physician?

A. I don't know how to answer that question, Counselor.

Q. Okay. Let me go back just a moment. You said that, you know, you use the phrase as a medical doctor or, you know, it's meaning to you comes from your experience as a medical doctor; is that right?

A. And the interpretation of the English language.

Q. Okay. But it's not from an interpretation of the law applied by judges in courts, is it?

A. I don't know that. I don't know -- if I'm asked a question and I answer it and a judge asks me the question and I give him an answer, I can only assume that the fact that I'm being asked that question would indicate that they are going to respect my answer or at

least feel that I'm able to give that answer. So I know what the "deliberate" means. I know what "intent" means. I know what the words mean. I know what they mean in English. I know what we are trying to get past. We are trying to get past -- there is a difference between someone doing something wrong that then leads to injury or death and to damages or causation. I understand that there are people that do things wrong and that what they do was stupid, unintentional but stupid. And then you have people are who are -- just don't care. It's a complete indifference to what -- I'm not going to do that and I don't care what happens. If you dye, you dye; I don't remember care; I'm not interested in what happens. That is what I mean when you use the word "indifference." Okay.

It's like I'm going to scream fire in a theater and I don't care who gets trampled, who gets hurt. That is an indifference to what -- to what their actions occurred.

Q. All right. But in terms of actually evaluating and studying the means of that term in legal cases and the way it's used in the courts, you haven't done that, have you?

A. I am not an attorney; I don't pretend to be an attorney, and I don't mean to be misinterpreted as an

attorney.

Q. All right. Have you ever read the deposition transcript of Dr. Steven Hayne?

A. Only a summary, not the actual deposition.

Q. Do you have that summary with you?

A. I don't see it in front of me, Counselor? Wait a minute. I got a couple more.

No, I don't see it.

Q. Okay. But you had it somewhere in your possession?

A. If I don't have it in front of me here, then when I said that I reviewed it, I misspoke. Because to the best of my knowledge, everything I have reviewed is here. So I don't see it here, so I either misplaced it or I misspoke when I told you that I reviewed it.

Q. Let me ask you this. As you sit here and testify today, do you know whether it's one or the other, whether you did not review or whether you did review it and misplaced it?

A. As I sit here at this moment and I'm looking at what I have, I believe I have not reviewed his deposition of his deposition summary. What I was mistaken for reviewing was the death certificate and his actual autopsy report.

Q. Okay. So you can not tell us here today, Dr.